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1 UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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VISIBLE SYSTEMS C.A. No. 04-CV-11610-RGS
3 CORPORATION

4 vs

5 UNISYS CORPORATION

6 ---

7 Friday, September 8, 2006

8 ---

9 C O N F I D E N T I A L

10 ---

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12 Oral Deposition of ELLYN M. RAFTERY,
13 was taken pursuant to Notice at the law offices
14 of COZEN O'CONNOR, 200 Four Falls Corporate
15 Center, Suite 400, P.O. Box 800, West
16 Conshohocken, PA 19428-0800 on the above date
17 before DEBRA G. JOHNSON-SPALLONE, CSR, RPR,
18 Notary Public, and a Federally Approved
19 Reporter of the United States District Court
20 commencing at or about 8:45 a.m.

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1 APPEARANCES:

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GALEBACH LAW FIRM

4 BY: STEPHEN H. GALEBACH, ESQUIRE

One Knollcrest Drive

5 Andover, MA 01810

(978) 258-5300

6 Representing the Plaintiff

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8

SUGARMAN, ROGERS, BARSHAK & COHEN, P.C.

9 BY: WILLIAM L. BOESCH, ESQUIRE

101 Merrimac Street

10 Boston, MA 02114-4737

(617) 227-3030

11 Representing the Defendant

12

13

ALSO PRESENT:

14

UNISYS CORPORATATION

15 BY: STEPHANIE E. THIER, ESQUIRE

Senior Trademark Counsel

16 Unisys Way

MS E8-114

17 Blue Bell, PA 19424

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1 there.

2 Q. When you talk about name that has
3 credibility with clients, what do you mean with
4 that concept?

5 A. Business Blueprinting describes
6 what we did in the process, and this 3D Visible
7 Enterprise was meant to describe the outcomes
8 of what the process did for a client. It was
9 not any more complicated than that.

10 Q. When did you first hear of the
11 name, 3D Visible Enterprise?

12 A. Well, I want to be as accurate as
13 possible. I believe it was December just prior
14 to the Christmas holiday. I don't know the
15 year. Maybe 2004 or 2003.

16 Q. Let's see.

17 If I tell you that the first,
18 let's say, ads that Unisys produced from, say,
19 Wall Street Journal, were June 2004, would that
20 help you to --

21 A. So, it would have been December
22 of 2003. Grey Advertising, together with Dick
23 Badler, presented to Joe McGrath, and myself,
24 and there were some other staff people in the

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1 room, what they had been working on, and they
2 were presenting to us the concept of a name
3 change from Business Blueprinting to 3D Visible
4 Enterprise.

5 Q. And what transpired at that
6 meeting?

7 A. There was a presentation that
8 was made by Grey, and the purpose of the
9 presentation was to walk Joe, and myself,
10 through their thinking about why they felt --
11 why a name change was required, and how they
12 got to the new name.

13 So, a little bit up front and why
14 they felt it needed a name change, and most of
15 it was what the name change -- what they were
16 proposing as the name change, why, and then
17 they had, as a way to kind of articulate how
18 that would be used, they -- they had several
19 ads that they had printed as examples just to
20 show how you could use that as a communication
21 articulation.

22 Q. So, Dick Badler was at the
23 meeting?

24 A. I believe he was at the meeting.

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1 Q. And do you recall who was there
2 from Grey?

3 A. I believe, to the best of my
4 recollection, a gentleman by the name of Steve
5 Centrillo, David Tootin. Another Dave, I can't
6 remember his last name. Possibly -- I can see
7 his face. I can't think of his name. Jack. I
8 can't remember Jack's last name. He was one of
9 their head writers.

10 Q. Okay.

11 Who else was there for Unisys?

12 A. There was a gentleman that worked
13 for Dick Badler by the name of Cary Baker. And
14 Cary -- I believe Cary was also present at that
15 meeting.

16 Q. Was Curt Girod there?

17 A. I don't believe Curt was at that
18 meeting.

19 Q. So, did you work closely with Joe
20 McGrath on this issue yourself?

21 A. Yes.

22 Q. What was the reason why a name
23 change was needed or desired at that time?

24 A. Well, Business Blueprinting

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1 described the process, and because business and
2 blueprinting are very common names, we could
3 not trademark that.

4 So that it was not specific to
5 Unisys, but it described our process and we
6 were okay with that. We had been through all
7 of those discussions prior to bringing in
8 Business Blueprinting to the market, and we
9 felt that it accurately reflected what it was
10 that we did in our process.

11 I don't know exactly what
12 transpired after we launched Business
13 Blueprinting and when they came up with the
14 name of 3D Visible Enterprise, but I believe
15 that Dick, who was responsible for advertising
16 at the time, and Grey, who was our agency of
17 record at the time, felt they were having a
18 difficult time working with that name and
19 trying to use that name as a part of the
20 communication strategy.

21 And I think as a result of that,
22 possibly led them to a discussion on needing to
23 change the name to something that they could
24 work with from a communications perspective.

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1 Q. So, at the meeting did Joe

2 McGrath suggest any names?

3 A. Joe did not suggest any names,

4 and Joe, to the best of my knowledge, was not

5 at all a part of this process of -- I mean, I

6 think he heard about the name at the same time

7 I heard about the name, and I don't think was

8 even knowledgeable that those discussions were

9 going on that we needed to change the name.

10 I was not a part of any of those

11 discussions. It was news to me and so, to the

12 best of my knowledge, Joe was not a part of any

13 of those discussions at all.

14 Q. Was the name at the meeting

15 proposed by Dick Badler or by Grey?

16 A. I believe it was a -- it was

17 specifically proposed by Grey, and it was their

18 presentation materials with their logos on the

19 bottom, but I believe it was a joint

20 announcement.

21 Q. Did Joe McGrath, or anyone else

22 at Unisys, to your knowledge suggest any of the

23 individual words for the name 3D Visible

24 Enterprise?

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1 A. Could you ask me that question
2 again?

3 MR. GALEBACH: I will ask
4 the reporter to read it back.

5 - - -

6 (At which time the following
7 question; "Did Joe McGrath, or
8 anyone else at Unisys, to your
9 knowledge, suggest any of the
10 individual words for the name 3D
11 Visible Enterprise?" was read
12 back by the court reporter.)

13 - - -

14 THE WITNESS: Not to the
15 best of my knowledge.

16 - - -

17 BY MR. GALEBACH:

18 Q. So, they didn't suggest the name
19 visible to Grey?

20 A. To Grey, not -- not that I'm
21 aware of.

22 Q. Did they suggest the name 3D to
23 Grey?

24 A. Who is "they"?

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1 A. Yes.

2 Q. -- to Joe McGrath, yourself and
3 others, you testified that was in December of
4 2003, shortly before Christmas break.

5 A. That's correct.

6 Q. Okay.

7 Did Joe McGrath make a decision
8 at that meeting to adopt the name 3D Visible
9 Enterprise?

10 MR. BOESCH: Object to the
11 form.

12 You may answer the question,
13 if you understand it.

14 THE WITNESS: Can you
15 restate your question?

16 - - -

17 BY MR. GALEBACH:

18 Q. At that meeting, what was Joe
19 McGrath's reaction to the name as proposed by
20 Grey?

21 A. Favorable.

22 Q. And did you come out of the
23 meeting knowing that 3D Visible Enterprise
24 would be the new name?

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1 A. No, we did not.

2 Q. What more needed to occur for

3 Unisys to make a decision to use the name?

4 MR. BOESCH: Objection to

5 the form of the question.

6 You can answer it, if you

7 can.

8 THE WITNESS: Why don't you

9 restate your question.

10 - - -

11 BY MR. GALEBACH:

12 Q. What happened after that?

13 What happened between that

14 meeting and the time when Unisys decided to use

15 the name 3D Visible Enterprise?

16 A. There was a series of

17 discussions. I'm not privy to all of them, so

18 I don't know when the final decision was made.

19 I'm aware of some of the steps,

20 but I don't know when the final decision was

21 made.

22 Q. Who were the key decision makers?

23 A. Well, I believe ultimately Larry

24 Weinbach.

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1 Was that the four layer logo?

2 A. (Witness nods.)

3 Q. Just please state your yes or no.

4 A. It's not a logo. It's a -- it's

5 an imagery for Business Blueprinting. There is

6 a four layer imagery that -- that we used to --

7 to visually depict the process.

8 Q. Okay.

9 So, was the idea around this time

10 frame to keep the four layer imagery and put

11 something about 3D Visible Enterprise in

12 association with that imagery?

13 A. Well, I don't know. But it

14 sounds like -- I can only speculate from what I

15 am reading in this e-mail, that it is possible.

16 Q. Okay.

17 So, the e-mail above that is now

18 from Dick Badler back to Tracy Kopco.

19 So, on to the bottom of page one.

20 So, Badler has no problem with

21 Ms. Kopco attending the meeting. It says that

22 neither Joe, Curt, nor Owen will be there on

23 January 5th. Joe is holding a staff meeting in

24 Brussels that week. Okay.

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1 So, did you, in fact, attend

2 Mr. McGarth's staff meeting in Brussels first

3 week of January?

4 A. I was not in Brussels.

5 I attended a presentation from

6 the Blue Bell office that was made to Joe's

7 staff. I believe that Dick and I worked

8 together in a conference room, video conference

9 through Brussels, and I believe that Dick

10 presented to Joe's staff the same presentation

11 materials that Grey had presented to Joe, and

12 to myself, a very similar presentation

13 materials.

14 I don't know if it was a

15 duplicate.

16 Q. And you were present for the

17 entire video conference meeting?

18 A. Just for that portion of the

19 meeting.

20 Q. Just the portion that dealt with

21 3D Visible Enterprise?

22 A. Yes.

23 Q. Okay.

24 So, what happened during the

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1 meeting?

2 MR. BOESCH: You mean, other

3 than from what she already said?

4 THE WITNESS: He put on his

5 own material.

6 - - -

7 BY MR. GALEBACH:

8 Q. Okay.

9 So, what happened after the
10 materials were presented?

11 A. Gosh, I don't recall. I think
12 there was probably some task of, you know,
13 acknowledgment from the team in Brussels in
14 terms of their receptivity to the presentation
15 that Dick had just made. And I don't recall
16 specifically the comments, but I do recall
17 that, as a result of that meeting, we began to
18 move forward to begin to develop our materials
19 to describe 3D Visible Enterprise.

20 Q. Did anyone make any negative
21 comments about the name 3D Visible Enterprise?

22 A. I don't recall.

23 Q. Were there any other names
24 present or considered during the meeting?

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1 A. Not that I recall.

2 Q. Were there any other names
3 present or considered at any time to your
4 knowledge?

5 A. Aside from Business Blueprinting
6 and all of the names that we had gone through
7 to make the decisions on Business Blueprinting?

8 Q. Well, at the time you adopted
9 Business Blueprinting, you said that there were
10 other names that were considered.

11 So now I'm asking you; at the
12 time 3D Visible Enterprise was adopted, were
13 there any other names that were considered?

14 A. And I told you, I was not a
15 part of those discussions and so, it is very
16 possible, and quite likely, there were names
17 that were considered, and the recommendation
18 that they were making was 3D Visible
19 Enterprise, and that is the name that they
20 brought forward.

21 I don't know anything more than
22 that.

23 Q. So, you, yourself, never
24 became aware of any other names considered